

Defendant's Exhibit B:

MDOC Policy Directive 03.03.140, “Prison Rape Elimination Act (PREA) and Prohibited Sexual Conduct Involving Prisoners” (eff. April 24, 2017) (No. 2:20-cv-76, PageID.137–146)

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE		EFFECTIVE DATE 04/24/2017	NUMBER 03.03.140
SUBJECT PRISON RAPE ELIMINATION ACT (PREA) AND PROHIBITED SEXUAL CONDUCT INVOLVING PRISONERS		SUPERSEDES 03.03.140 (09/15/2015); DOM 2017-23	
		AUTHORITY MCL 750.145m; MCL 750.520c; MCL 791.203; MCL 791.204; 42 USCA 15601 et. seq.; Prison Rape Elimination Act (PREA) of 2003	
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POLICY STATEMENT:

The Department has a zero tolerance standard for sexual abuse between or among prisoners. The Department also has a zero tolerance for staff sexual misconduct, staff sexual harassment, and staff overfamiliarity with prisoners.

RELATED POLICIES:

- 01.01.140 Internal Affairs
- 02.03.100 Employee Discipline
- 03.03.105 Prisoner Discipline
- 03.03.110 Special Problem Offender Notice
- 03.03.130 Humane Treatment and Living Conditions for Prisoners
- 04.05.120 Segregation Standards

POLICY:DEFINITIONS

- A. The definitions in Paragraphs B - H only apply to this policy.
- B. Employee - For purposes of this policy only, Employee refers to Michigan Department of Corrections (MDOC) employees, contractors, and volunteers.
- C. Prisoner - For purposes of this policy, "prisoner" includes probationers in the Special Alternative Incarceration Program (SAI) and parolees residing in a Reentry facility unless otherwise stated.
- D. Prisoner-on-Prisoner Sexual Abuse - Sexual abuse of a prisoner by another prisoner includes any of the following acts if the victim is not a willing participant, or is coerced into such act(s) by overt or implied threats of violence.
 - 1. Non-consensual sexual acts:
 - a. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
 - b. Contact between the mouth and the penis, vulva or anus;
 - c. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument; and
 - 2. Abusive sexual contact:
 - a. Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh or the buttocks of another person, excluding contact incidental to a physical altercation.
- E. Prisoner-on-Prisoner Sexual Harassment - Includes repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one prisoner directed toward another prisoner.

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- F. Staff Overfamiliarity - Conduct between an employee and a prisoner which has resulted in or is likely to result in intimacy, including but not limited to a kiss or a hug, or a close personal or non-work related association.
- G. Staff-on-Prisoner Sexual Harassment - Includes repeated verbal comments, written statements, or gestures of a sexual nature to a prisoner by an employee, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing and profane or obscene language or gestures.
- H. Staff-on-Prisoner Sexual Misconduct (Under Prison Rape Elimination Act [PREA] guidelines this is also referred to as staff-on-prisoner sexual abuse) - Sexual Abuse of a prisoner by an employee, including any of the following acts, willing or unwilling on the part of the prisoner:
1. An attempted, threatened, or requested sexual act or helping, advising, or encouraging another employee to engage in a sexual act. This does not include acts related to official duties (e.g., strip searches, pat down searches, chest compressions during CPR, etc.).
 2. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight.
 3. Contact between the mouth and the penis, vulva or anus.
 4. Contact between the mouth and any body part where the employee has the intent to abuse, arouse or gratify sexual desire.
 5. Penetration of the anal or genital opening, however slight, by a hand, finger, object or other instrument, that is unrelated to official duties or where the employee has the intent to abuse, arouse or gratify sexual desire.
 6. Any other intentional contact, either directly or through clothing, of or with the genitals, anus, groin, breast, inner thigh, or buttocks that is unrelated to official duties or where the employee has the intent to abuse, arouse, or gratify the sexual desire of any person.
 7. Any attempt, threat or request by an employee to engage in the activities described above.
 8. Any display by an employee of his or her uncovered genitalia, buttocks or breast in the presence of a prisoner.
 9. Invasion of privacy for sexual gratification or voyeurism.

GENERAL INFORMATION

- I. The Department has a zero tolerance standard for sexual abuse between or among prisoners. The Prison Rape Elimination Act (PREA) addresses prisoner-on-prisoner sexual abuse, staff sexual misconduct, and staff sexual harassment in correctional facilities. PREA specifically provides for the analysis of the incident and effects of such conduct and requires the issuance of national standards to address sexual abuse in a correctional setting. The PREA Manager, Budget and Operations Administration (BOA), shall be responsible for reporting statistical information and other data as required under the Act and for oversight of the Department's compliance with the national standards when issued. The PREA Manager also is responsible for monitoring compliance with this policy.
- J. The PREA Manager oversees and coordinates the efforts of the MDOC to comply with Federal PREA standards including development and implementation of policy, and maintains a PREA Manual which shall be reviewed and updated as needed. The manual shall be consistent with PREA standards and outline methods consistent with maintaining PREA compliance.
- K. This policy does not apply to probationers and parolees who are being supervised in the community except as set forth in Paragraph U. However, staff sexual misconduct/sexual harassment and staff

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overfamiliarity involving these offenders also is prohibited and shall be reported and investigated as set forth in PD 01.01.140 "Internal Affairs" and PD 02.03.100 "Employee Discipline."

- L. Allegations of prisoner sexual assaults against staff shall be reported to the Michigan State Police (MSP) or other appropriate law enforcement agency for investigation. A prisoner in a Correctional Facilities Administration (CFA) facility also shall be subject to discipline in accordance with PD 03.03.105 "Prisoner Discipline," and as appropriate, reclassification to a higher security level, including segregation, in accordance with PD 05.01.130 "Prisoner Security Classification" and PD 04.05.120 "Segregation Standards."
- M. Wardens shall designate a PREA Coordinator at each facility under his/her supervision. The PREA Coordinator shall have sufficient time and authority to coordinate the facility's efforts to comply with the standards outlined in the PREA Manual. The PREA Coordinator shall be responsible for monitoring and providing assistance regarding all aspects of PREA compliance in areas such as training, education, reporting, documentation and investigation of PREA-related allegations.
- N. To ensure compliance with standards developed by the National Prison Rape Elimination Commission, audits will be conducted by approved auditors in accordance with the Department of Justice (DOJ) PREA Audit Instrument.
- O. For facilities housing male offenders, female staff must announce their presence each time they enter a prisoner housing unit. Staff must knock on the most interior door and announce in a loud clear voice, "female(s) in the area" and wait 10 seconds before entering.
- P. For facilities housing female offenders, male staff must announce their presence each time they enter a prisoner housing unit. Staff must knock on the most interior door and announce in a loud clear voice, "male(s) in the area" and wait 10 seconds before entering. Also, at facilities housing female offenders, staff shall follow procedures outlined in WHV OP 03.03.140 "Prohibited Sexual Conduct Involving Prisoners" and SAI OP 03.03.140 "Prohibited Sexual Conduct Involving Trainees (PREA)."

RISK ASSESSMENTS

- Q. All prisoners shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other prisoners or being sexually abusive toward other prisoners. The OMNI-based risk assessment tools will be used to determine a prisoner's risk. The results of the risk assessment shall be considered when making housing, bed, work, education, and program assignments with the goal of keeping separate those prisoners at high risk of being sexually victimized from those at high risk of being sexually abusive. Staff shall complete a PREA-Aggressor Risk Assessment-Prison and a PREA-Victim Risk Assessment-Prison in accordance with the PREA Risk Assessment Manual. Staff designated by the Warden shall complete both PREA Risk Assessments if any of the following occur:
 - 1. Within 72 hours of a prisoner's arrival at a correctional facility, including intake.
 - 2. Whenever warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that may increase the prisoner's risk of being sexually abused by other prisoners or being sexually abusive toward other prisoners.
- R. In addition to the PREA Risk Assessments required in Paragraph Q, staff designated by the Warden shall complete a PREA-Risk Assessment Review-Prison if any of the following occur:
 - 1. Within 30 calendar days of a prisoner's arrival at a correctional facility, including intake.
 - 2. It has been 12 months since the last review.

PROHIBITED CONDUCT

- S. Prisoners are prohibited from having any sexual contact with another prisoner. A prisoner in a CFA facility who willingly engages in such behavior is subject to discipline in accordance with PD 03.03.105 "Prisoner Discipline" and, as appropriate, reclassification to a higher security level, including segregation,

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in accordance with PD 05.01.130 "Prisoner Security Classification" and PD 04.05.120 "Segregation Standards." A Special Problem Offender Notice (SPON) shall be issued, as appropriate, as set forth in PD 03.03.110 "Special Problem Offender Notice." Parolees residing in a Reentry facility are subject to parole revocation in accordance with PD 06.06.100 "Parole Violation Process." Probationers in SAI are subject to termination from that program and may be returned to the jurisdiction of the sentencing court.

- T. Staff sexual harassment/sexual misconduct and staff overfamiliarity are violations of Department work rules. Staff that engage in such conduct are subject to disciplinary action pursuant to PD 02.03.100 "Employee Discipline." It also is a felony for staff to engage in sexual contact with a prisoner, as defined in MCL 750.520c.
- U. It is a felony for a contractual employee or a volunteer to engage in sexual contact with an offender, as defined in MCL 750.520c. A contractual employee or volunteer who engages in such behavior shall be prohibited from providing services within any Department correctional facility. In addition, a parolee or a probationer shall not be required to receive services from a contractual employee or volunteer in the community known to have engaged in such conduct. If such contact is reported by a parolee or probationer, the supervising agent shall ensure that the parolee or probationer is not required to have any further contact with the individual pending investigation of the matter. The supervising agent also shall immediately notify the Deputy Director of Field Operations Administration (FOA) or designee of the matter through the appropriate chain of command. The FOA Deputy Director or designee shall ensure a prompt investigation is conducted to verify whether the contractual employee or volunteer was found to have engaged in such conduct and, if verified, take appropriate action to ensure the individual no longer provides services to probationers or parolees.
- V. All prisoners and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations are protected from retaliation for reporting the incident or participating in the investigation.

CONFIDENTIALITY OF REPORTS AND INVESTIGATIONS

- W. Reasonable steps shall be taken to ensure the confidentiality of information obtained during the risk assessment process and from reports of conduct prohibited by this policy and any resulting investigations. Persons interviewed as part of an investigation shall be specifically warned not to discuss the investigation with others. Staff that intentionally compromise this confidentiality shall be subject to discipline in accordance with PD 02.03.100 "Employee Discipline." Prisoners in a CFA facility who intentionally compromise this confidentiality shall be subject to discipline in accordance with PD 03.03.105 "Prisoner Discipline." This does not preclude staff from discussing such matters with their attorneys or in accordance with this or any other policy directive, Civil Service Commission rules and regulations, or applicable collective bargaining unit agreements. This also does not preclude prisoners from discussing such matters with their attorneys, to seek treatment, or to ensure their own safety. The PREA Manager shall share with the facility head and his/her supervisors, as appropriate, allegations of conduct prohibited by this policy, which are received directly by the PREA Section.

REPORTING PROHIBITED CONDUCT

- X. Employees shall immediately report any knowledge, suspicion or information regarding allegations of conduct prohibited by this policy to appropriate supervisory staff. Reports shall be taken regardless of when the incident was alleged to have occurred. Reports may be made privately to appropriate supervisory staff, through the MDOC Sexual Abuse Hotline, by completing a Department Sexual Abuse/Sexual Harassment Complaint form on the MDOC website, by contacting the PREA Manager or by contacting the Department's Internal Affairs Division. If the allegations pertain to conduct at another facility (including county jails, another state prison, federal prison or substance abuse program facility), the Warden shall provide email notification within 72 hours as follows:
 - 1. For allegations of sexual abuse within the MDOC - To the appropriate facility head. The Inter-Administration Investigation Protocol issued by the CFA and FOA Deputy Directors shall be followed if the allegation is regarding the conduct of an employee from another Administration. The appropriate facility head shall verify whether the allegation had been previously investigated. If not, s/he shall ensure the allegation is entered into the Department's computerized database and investigated in a timely manner. A courtesy copy shall be forwarded to the Department's

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PREA Manager.

2. For allegations of sexual abuse which occurred outside the MDOC - To the third party facility or local law enforcement where the incident was alleged to have occurred.
- Y. Prisoners may report allegations of conduct prohibited by this policy, including threats of such conduct and retaliation for reporting such conduct, verbally or in writing to any Department employee, through the MDOC Sexual Abuse Hotline, through the PREA grievance process as outlined in this policy, through the Legislative Corrections Ombudsman, or through a third party. If reported verbally to an employee, the employee shall document it in writing as soon as possible and report it to appropriate supervisory staff. When receiving any report of sexual abuse or sexual harassment, regardless of the source, staff shall promptly document and forward the complaint to the appropriate supervisory staff for investigation.
- Z. Prisoners in a CFA facility who report that they have been the victim of a prisoner-on-prisoner sexual abuse or staff sexual misconduct shall be referred to the Bureau of Health Care Services (BHCS) for examination, evidence collection, and treatment. They also shall be referred to BHCS mental health services staff for assessment, counseling, and other necessary mental health services consistent with the requirements set forth in PD 04.06.180 "Mental Health Services." Parolees in a Reentry facility who report that they have been the victim of a prisoner-on-prisoner non-consensual sexual act or staff sexual misconduct shall be permitted to speak with a counselor available in the local community, if requested.
- AA. Prisoners in a CFA facility who make accusations of misconduct against employees, including for staff sexual misconduct/sexual harassment or staff overfamiliarity, which after investigation are determined to be unfounded may be charged with the misconduct of "Interference with the Administration of Rules," with approval of the Warden or designee. The misconduct may be elevated to Class I with the approval of the CFA Deputy Director or designee. Hearings shall be conducted in accordance with PD 03.03.105 "Prisoner Discipline."
- BB. Medical and mental health staff shall obtain informed consent from prisoners before reporting information about prior sexual victimization that did not occur in an institutional setting. A PREA Authorization for Release of Information Form (CAJ-1028) shall be used for this purpose. A copy of the CAJ-1028 shall be retained for auditing purposes.
- CC. Employees who are Health Care and Mental Health practitioners are required to report allegations of sexual abuse that occurred in an institutional setting, whether or not the institution is part of the Department. The practitioner shall inform the prisoner of the practitioner's duty to report and that confidentiality is limited.
- DD. The facility shall report any allegations of alleged victims under the age of 18 or who are considered a vulnerable adult under a state or local vulnerable persons statute to the PREA Manager. After the PREA Manager receives the reported allegations, s/he will forward the allegations to the appropriate agencies, to the extent the law requires such reporting.

PREA GRIEVANCES

- EE. The PREA Grievance process is a two-step process allowing prisoners to grieve regarding allegations of sexual abuse. A prisoner may file a PREA Grievance at Step I, and may appeal the Step I decision to Step II. The Step II decision shall serve as the Department's final decision on the merits of the PREA Grievance. Issues filed by prisoners regarding sexual abuse, as defined in this policy, serve to exhaust the prisoner's administrative remedies only when filed through both steps of the PREA grievance process. PREA Grievances alleging sexual abuse shall not be denied or rejected.
- FF. Prisoners shall use the PREA Prisoner Grievance Form (Step I) (CAJ-1038A) to file a PREA Grievance. The form may be completed by hand or typewritten. However, handwriting must be legible. The issues should be stated briefly but concisely. Information provided should be limited to the facts involving the issues being grieved (i.e., who, what, when, where, why and how). Dates, times, places and names of all those involved should be included. Information should be confined to the form and not written on the back, sides or margins of the form, or in the area provided for a response. Additional pages may be attached to the grievance form if necessary to provide required information. If additional pages are necessary, the prisoner must submit four copies of each additional page.

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- GG. A prisoner may file a PREA grievance at any time by submitting a completed CAJ-1038A to the appropriate staff, as identified by the warden, of the institution at which the prisoner is housed. Prisoners are not required to use any informal grievance process, or to otherwise attempt to resolve with staff an alleged incident of sexual abuse.
- HH. Staff shall log and assign a unique identifying number (facility code – year – month - AIM number - PREA) to each Step I PREA grievance received. The unique identifying number shall consist of the AIM number assigned to the investigation resulting from the grievance. If the grievance does not result in an investigation and subsequent AIM number, staff shall use a unique identification number (i.e., 00001,00002, etc.) in place of the AIM number. If any facility staff receives a PREA Grievance, the PREA Grievance shall be immediately forwarded to the appropriate facility staff, as identified by the Warden, to respond to the PREA grievance. Additionally, all allegations of sexual abuse not previously investigated shall be referred for investigation as set forth in PD 01.01.140 "Internal Affairs" and this policy.
- II. Any PREA Grievance containing issues other than sexual abuse shall be denied and returned to the prisoner with instructions to submit the grievance in accordance with PD 03.02.130 "Prisoner/Parolee Grievances." Any PREA grievance containing multiple issues, which include sexual abuse and non-sexual abuse issues, shall be processed in accordance with this policy in order to address the allegations of sexual abuse only. The prisoner shall be notified in the PREA Grievance response that s/he must submit a new grievance in accordance with PD 03.02.130 to address any concerns not related to sexual abuse.
- JJ. Prisoners shall not be required to submit a PREA grievance to a staff member who is the subject of the complaint, nor shall a PREA grievance be referred to a staff member who is the subject of the complaint.
- KK. The PREA Coordinator shall ensure a written response is provided to the prisoner within 60 calendar days of receipt of the Step I PREA Grievance, absent an extension. The facility may claim an extension, not to exceed an additional 70 calendar days, if the normal time period for response is insufficient to make an appropriate decision regarding the grievance. If an extension is taken, the facility shall notify the prisoner in writing of the extension and a date by which a decision will be made.
- LL. Prisoners may appeal a Step I decision to Step II if s/he is dissatisfied with the Step I response or did not receive a Step I response in a timely manner. The Step II response shall be the Department's final decision regarding the matter. The Step II response shall be issued within 90 calendar days of receipt of the Step I PREA Grievance, absent an extension. The time consumed by the prisoner to prepare his/her appeal shall not be included in the time limits listed above.
- MM. Third parties, including fellow prisoners, staff members, family members, attorneys, and outside advocates, shall be permitted to assist prisoners in filing PREA grievances related to sexual abuse, and shall be permitted to file such grievances on the prisoner's behalf.
- NN. If a PREA Grievance alleging sexual abuse is filed by a third party on behalf of a prisoner, the alleged victim must sign the PREA Grievance authorizing the grievance to be filed on his/her behalf. Failure to sign the grievance will result in the grievance being immediately dismissed. All Department responses to grievances filed by a third party shall be provided to the prisoner on whose behalf the grievance was filed. Any issues other than sexual abuse addressed in third party grievances shall be denied in accordance with this policy.
- OO. If a prisoner has reasonable belief s/he is subject to a substantial risk of imminent sexual abuse, s/he may file an Emergency PREA Grievance in order to seek protection from the imminent risk. The PREA Grievance filed must clearly indicate the grievance is an Emergency PREA Grievance and state in a clear and concise manner what the prisoner believes to be an imminent risk.
- PP. Upon receipt of an Emergency PREA Grievance, staff shall forward the grievance to the Warden, or designee, in order for immediate corrective action to be taken, if appropriate, to protect the prisoner from sexual abuse. The Warden, or designee, shall provide an initial response within 48 hours addressing the prisoner's claim regarding imminent risk and whether emergent action is necessary. The facility's initial response shall be immediately forwarded to the PREA Manager who will provide the Department's final

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decision regarding the prisoner's claim of imminent risk. The PREA Manager will provide the decision within five calendar days of the submission of the grievance. The facility's response and the agency's final decision shall document whether the prisoner is in substantial risk of imminent sexual abuse and if any emergent action was necessary.

- QQ. If a prisoner makes false allegations of sexual abuse on a PREA grievance which is investigated and determined to be no evidence/unfounded, the prisoner may be disciplined in accordance with PD 03.03.105 "Prisoner Discipline" and this policy.

INVESTIGATION OF SEXUAL ABUSE/SEXUAL HARASSMENT

- RR. Investigations of sexual abuse/sexual harassment shall be completed by staff who have received specialized investigator training as outlined in the PREA Manual. All investigations shall be conducted promptly, thoroughly and objectively. All PREA investigations shall be conducted in accordance with the Sexual Abuse/Sexual Harassment Investigations portion of the PREA Manual.
- SS. Facility staff shall work to avoid transferring prisoners if they are the alleged victim, perpetrator, or witness in a pending PREA related investigation. If a prisoner is transferred prior to the completion of an investigation, the facility shall document the rationale for the transfer.
- TT. Staff who are accused of, witnessed, or have personal knowledge of conduct prohibited by this policy and refuse to cooperate with an investigation shall be subject to discipline, in accordance with PD 02.03.100 "Employee Discipline."
- UU. The Warden or Lake County Residential Reentry Program (LCRRP) Manager, as appropriate, shall ensure the victim is notified in writing of the final disposition of an investigation involving allegations of sexual abuse. The PREA Prisoner Notification of Sexual Abuse Investigative Findings and Action Form (CAJ-1021) shall be used for this purpose. The CAJ-1021 shall be retained as part of the investigative packet.
- VV. Following an allegation that a staff member committed sexual abuse against a prisoner, the facility conducting the investigation shall inform the prisoner unless the investigation determines the allegation was unfounded, whenever:
1. Any disciplinary action is taken. However, details of the discipline, including specific charges and sanctions shall not be provided;
 2. The staff member is no longer assigned within the prisoner's unit;
 3. The staff member is no longer employed at the facility;
 4. The Department learns the staff member has been indicted on a charge related to sexual abuse within the facility, or;
 5. The Department learns that the staff member has been convicted on a charge related to sexual abuse within the facility.
- WW. Following allegations that a prisoner was sexually abused by another prisoner, the Department shall subsequently inform the alleged victim whenever:
1. The Department learns the alleged abuser has been indicted on a charge related to sexual abuse within the facility, or;
 2. The Department learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
- XX. Wardens and the LCRRP Manager shall ensure that information on all allegations of prisoner-on-prisoner sexual abuse, staff sexual misconduct/sexual harassment, and staff overfamiliarity are entered into the MDOC computerized database at their respective facilities and investigated. In addition, information on

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the outcome of each investigation shall be entered. Information on allegations that do not result in sustained rule violations shall not be retained in an employee's Personnel file or used for any purpose not authorized by this or any other policy directive. Only the Deputy Director and his/her staff involved in employee disciplinary proceedings, including the Internal Affairs Division, the PREA Manager and his/her staff, and other staff specifically authorized by the Director or designee, shall have access to information in AIM.

- YY. For each investigation which sustains an allegation of prisoner-on-prisoner sexual abuse, and for each investigation which results in sustained disciplinary charges for staff sexual misconduct/sexual harassment, staff designated by the Warden shall ensure that a completed United States Department of Justice Survey on Sexual Violence Form (SSV-IA) is sent to the PREA Manager along with any other documentation as requested by the PREA Manager. If the case involves only an allegation of staff overfamiliarity, documentation shall be provided as requested by the PREA Manager or designee.

Prisoner-on-Prisoner Sexual Abuse

- ZZ. All reported allegations of prisoner-on-prisoner sexual abuse or threats of such behavior, whether reported verbally or in writing, shall be referred to the Warden or designee, or in FOA, to the Administrator of the Office of Parole and Probation Services or designee, for investigation. The assigned investigator shall personally interview the alleged victim, the alleged perpetrator, and sufficient witnesses to establish the facts, unless otherwise directed by the investigating law enforcement agency. The investigation shall be coordinated as necessary with the Hearing Investigator if misconduct charges are issued.

- AAA. Any allegation(s) that appear to be criminal shall be referred to the MSP or other appropriate law enforcement agency to be criminally investigated and referred for prosecution. The Department investigation shall be coordinated as necessary with the investigating law enforcement agency to ensure the Department's efforts will not be an obstacle for prosecution. However, the Department investigation shall proceed with PD 01.01.140 "Internal Affairs" and regardless of whether the referral results in criminal prosecution.

Staff Sexual Misconduct/Harassment and Staff Overfamiliarity

- BBB. All reported allegations of staff sexual misconduct/sexual harassment or staff overfamiliarity, whether reported verbally or in writing, shall be referred for investigation as set forth in PD 02.03.100 "Employee Discipline" or PD 01.01.140 "Internal Affairs," as appropriate. Any allegation(s) that appear to be criminal shall be referred to the MSP or other appropriate law enforcement agency to be criminally investigated and referred for prosecution. The Department investigation shall be coordinated as necessary with the investigating law enforcement agency to ensure the Department's efforts will not be an obstacle for prosecution. However, the Department investigation shall proceed in accordance with PD 01.01.140 "Internal Affairs" and PD 02.03.100 "Employee Discipline" regardless of whether the referral results in criminal prosecution.
- CCC. In all investigations of staff sexual misconduct/sexual harassment or staff overfamiliarity, investigators shall personally interview the complainant, the alleged victim if not the complainant, the alleged perpetrator, and sufficient witnesses to establish the facts. The investigation shall not be closed simply due to the resignation, transfer, or termination of the accused staff person.

ADDITIONAL MEASURES TO MINIMIZE PROHIBITED CONDUCT

- DDD. The Administrator of the Training Division, BOA, shall ensure both new employee and in-service training is available to staff regarding conduct prohibited by this policy. In addition, the Administrator of the Training Division shall ensure that training is available on how to conduct investigations under this policy. Staff, including investigators and facility administrators, shall attend training as required.
- EEE. The PREA Manager shall ensure standardized educational material to educate prisoners regarding conduct prohibited by this policy, self-protection, how to report conduct or threats of conduct prohibited by this policy, and treatment and counseling is accessible to all prisoners. Educational materials shall be available to all prisoners, including any updates, in CFA and Reentry facilities and shall be incorporated into facility orientation programs. If needed, the Department will seek the assistance of interpreters for prisoners with disabilities or limited English proficiency.

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FFF. Each Warden shall take reasonable measures to eliminate prisoner access to secluded areas of the facility. This includes conducting rounds of such areas as set forth in PD 04.04.100 "Custody, Security, and Safety Systems."

GGG. Each Warden shall ensure the facility's physical plant layout enables prisoners to shower, perform bodily functions and change clothing without nonmedical staff of the opposite gender viewing the prisoner's breasts, buttocks or genitalia except in exigent circumstances or when such viewing is incidental to routine cell checks. Instances of cross-gender viewing in exigent circumstances shall be documented in writing to the Warden and retained for the PREA Audit.

Identification/Counseling of Prisoners with Histories of Sexual Victimization or Sexually Aggressive Behavior

HHH. Prisoners received at a reception facility who have been convicted of or identified as having a history of a predatory or assaultive sexual offense shall be interviewed by a Qualified Mental Health Professional or other appropriate staff as set forth in PD 04.01.105 "Reception Facility Services." Prisoners identified as having a history of physical or sexual abuse, or who pose a reasonable concern that they may be sexually victimized while incarcerated due to age, physical stature, history, or physical or mental disabilities shall be similarly referred as set forth in PD 04.01.105.

III. Prisoners with a history of sexually aggressive behavior, or who are found guilty of sexually aggressive behavior while incarcerated, shall be referred to BHCS mental health services staff for assessment, counseling, and other necessary mental health services, as appropriate, consistent with the requirements set forth in PD 04.06.180 "Mental Health Services." Prisoners who are reasonably believed to be at risk of sexual victimization while incarcerated, or who have been sexually assaulted while incarcerated, shall similarly be referred.

Placement of Prisoner With History of Sexually Aggressive Behavior Involving a Victim of the Same Sex

JJJ. With approval of the CFA Assistant Deputy Director (ADD) of the Operations Division or designee, a prisoner identified at a reception facility as having used force or the threat of force to engage in, or attempt to engage in, abusive sexual contact or a non-consensual sexual act with a victim of the same sex shall be placed only in single-cell housing only in a Level IV or V facility in accordance with PD 04.01.105 "Reception Facility Services" to reduce the potential assault risk to other prisoners. Similarly, if a prisoner is found guilty of misconduct for using force or the threat of force to engage in, or attempt to engage in, abusive sexual contact or a non-consensual sexual act with a victim of the same sex while incarcerated in a CFA facility, the prisoner shall be placed only in single-cell housing in a Level IV or V facility unless the Warden believes that such placement is not necessary and the CFA ADD of Operations or designee approves alternative placement.

KKK. Whenever it is determined that a prisoner may be placed only in single-cell housing in a Level IV or V facility, the prisoner's continuing need for such placement shall be reassessed whenever s/he is screened for security classification pursuant to PD 05.01.130 "Prisoner Security Classification," the original reason for the placement and the prisoner's conduct since the original incident that led to the placement shall be taken into consideration. If it is believed that the prisoner may no longer require such placement, the case shall be referred to the Warden for review. If the Warden agrees that the prisoner may no longer require such placement, the case shall be referred to the CFA ADD of or designee for a final determination. In all circumstances, however, the case shall be referred to the CFA ADD of Operations or designee for review at least every five years after the initial placement decision was made.

LLL. The CFA Deputy Director may require that a prisoner who has used force or the threat of force to commit or attempt to commit a non-consensual sexual act involving a victim of the same sex be placed only in single-cell housing in a Level IV or V facility, or allow alternative placement, on his/her own initiative.

VICTIM ADVOCATES

MMM. The Department shall attempt to make available a victim advocate from rape crisis centers, which are not part of the criminal justice system, that provide counseling and confidentiality to prisoner victims. If a victim advocate from a rape crisis center is not available to provide victim advocate services, the facility

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shall make available to the prisoner a properly trained advocate from:

1. The hospital at which the prisoner will be transported for sexual abuse treatment,
2. The facility's medical and/or mental health staff,
3. On-shift facility staff who have agreed to be a victim advocate,
4. Off-shift facility staff who have agreed to be a victim advocate.

NNN. The Department shall provide prisoner victims with access to outside victim advocates for emotional support services related to sexual abuse if available.

PROCEDURES

OOO. The FOA Deputy Director and Wardens shall ensure that procedures are developed within 60 days after the effective date of this policy.

APPROVED: HEW 03/07/2017